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Before the

Federal Communications Commission

Washington, DC 20554

In the Matter of	)	
	)	
Replacement of Part 90 by Part 88	)	
to Revise the Private Land Mobile	)	PR Docket No. 92-235
Radio Services and Modify the	)	
Policies Governing Them	)	
	)	
and	)	
	)	
Examination of Exclusivity and	)	
Frequency Assignment Policies of	)	
the Private Land Mobile Radio Services	)	

To: The Commission

PETITION FOR PARTIAL RECONSIDERATION

MRFAC, Inc. ("MRFAC"), by its counsel hereby petitions for partial reconsideration of the Second Memorandum Opinion and Order (the "Order"), FCC 99-68, 64 Fed. Reg. 36258 (July 6, 1999). In particular, MRFAC seeks reconsideration of two aspects of the Order: (1) the determination that MRFAC must refer applications for frequencies which the Manufacturers Radio Service historically shared with the Petroleum, Power and Railroad Radio Services prior to consolidation, to API, UTC or AAR respectively (or, if API, UTC and AAR so elect, obtain their concurrence);[1] and (2) the determination that licensees/applicants seeking to use low-power, spectrally-efficient, wideband (25 kHz) equipment must secure a waiver in order

[1] American Petroleum Institute; United Telecom Council (formerly UTC, the Telecommunications Association) ("UTC"); and Association of American Railroads. One additional radio service, Automobile Emergency and its coordinator (AAA) is also within the scope of the rule. However, MRFAC did not share frequencies with AAA prior to consolidation.

to secure primary status. As shown, herein, these determinations are in error and should be revised on reconsideration.

Frequency Coordination Rule

Yesterday, July 7, MRFAC filed a Motion for Expedited Partial Stay of the Order. The Motion seeks an immediate stay of the shared frequency coordination rule. As the Motion demonstrates, the rule is fatally deficient as a matter of law (or mixed fact and law), and should not be allowed to stand.[2] MRFAC hereby requests that the Commission revise the Rule to either (1) eliminate the requirement that MRFAC send coordination requests for these frequencies to UTC or API, as appropriate (or secure their concurrence); or (2) require that UTC and API forward applications they receive for the subject frequencies to MRFAC (or secure its prior concurrence); or (3) require that any application for these frequencies, regardless of coordinator, be subject to prior notification to other Industrial/Business pool coordinators and a reasonable waiting period to allow for objections to be lodged. Any one of these three options would produce a level playing field.

Low Power Rule

Insofar as the low power rule is concerned, the Order specifically determined that: (1) existing, wideband (25 kHz) licensees migrating to a dedicated low power channel can obtain primary status as to co-channel licensees, but must be secondary as to adjacent channel licensees;[3] (2) that new low power wideband licenses will be issued for dedicated low power channels, but only on a secondary basis as to both co- and adjacent-channel licensees. In order

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[2] MRFAC hereby incorporates by reference the arguments set forth at length in the Motion.

[3] Id. at par. 34.

for either of these types of users to obtain primary status, a waiver request would have to be filed with a showing that, for example, the applicant intends to use spectrally-efficient equipment as defined in Rule 90.203.[4]

The Order states that this position is consistent with that of LMCC, at least with respect to the migrating licensees referenced in (1), above. In this respect, it cites a letter filed by LMCC on November 24, 1997.[5] However, subsequent to this date, on January 30, 1998, LMCC filed a second letter. Attachment. The January 30 letter noted that

> "MRFAC/FIT have requested that the Commission interpret its re-farming policies as permitting a user, willing to invest in new, spectrum efficient technology to be entitled to stack channels and attain co-primary status as against co- and adjacent channel users, whether that user be high-power or low-power, as long as: (1) the application has been coordinated; and (2) the user proposes to employ equipment with efficiency equivalent to narrowband."

LMCC then goes on to express its support for this position:

> "[L]icensees who are able to secure coordination for these types of systems will be treated the same -- no better and no worse -- than any other applicant who is able to achieve successful coordination, whether that applicant be wideband (25 kHz) or narrowband (e.g. 6.25 kHz). Again, however, the predicate is that the licensee proposes a system which offers spectrum efficiency equivalent to that specified by the Commission (e.g. 4,800 bps per 6.25 kHz). For example, if an applicant requested and secured coordination for four (4) adjacent 6.25 kHz channels using equipment which operated with 25 kHz bandwidth and which provided four separate voice paths, that applicant would be entitled to co-primary status as against adjacent channel users coordinated subsequently. Coordinators would be expected to protect that user just as they

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4 Id. at par. 36.

5 Id., note 89.

would protect any applicant who had already received coordination from an applicant who files subsequently.[6]"

This letter makes no distinction between existing or new users. Rather, it stresses the desirability of users being able to deploy wideband equipment simply subject to a showing to the coordinator of equivalent efficiency and, of course, frequency coordination.

In short the Order appears to have reached the result it did based on the mistaken belief that this represented the consensus position of the coordination community. As the January 30, 1998 letter makes clear, this was not the case.

Beyond this, there is no reason to require applicants seeking to use 25 kHz spectrally-efficient low power equipment to secure a "waiver" of the Commission's Rules in order to achieve primary status, whether co- or adjacent-channel.

First of all, use of spectrally-efficient wideband equipment is fully consistent with the Commission's emphasis in re-farming on technological neutrality and user flexibility. See First Report and Order in PR Docket No. 92-235, FCC 95-255, 10 FCC Rcd 10076 (1995) at paras. 29 and 37. Moreover, it is consistent with the Commission's determination to allow users to stack channels so as to achieve necessary throughputs. Id. at paras. 24, 26-27, 80 and 97.

More importantly, under the proposal supported by LMCC it is incumbent upon the applicant to demonstrate that the proposed equipment in fact will achieve spectral-efficiency equivalent to narrowband equipment. Coordinators are capable of determining whether an applicant has satisfied that burden. By contrast, the waiver route simply adds another layer of

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6 LMCC stated that its support was premised on the notion that granting the MRFAC/FIT clarification would not delay action on LMCC's low power plan. As the Order makes clear, the delay affecting the low power plan has had nothing to do with the MRFAC/FIT clarification request. See id. at note 85 and paragraph 37 (delay due to medical telemetry issue).

unnecessary expense for both the applicant and the Commission. It thus effectively acts as a hindrance to the overarching re-farming goal of achieving greater spectrum efficiency.

Conclusion

Accordingly, for the foregoing reasons, the Commission should rescind the new shared frequency coordination rule and eliminate the waiver requirement for low-power, wideband licensees and applicants who propose to use equipment which has a spectral efficiency equivalent to narrowband.

Respectfully submitted,

MRFAC, Inc.

By: 

William K. Keane
Elizabeth A. Hammond

ARTER & HADDEN LLP
1801 K Street, NW, Suite 400K
Washington, DC 20006
(202) 775-7100

Its Counsel

July 8, 1999

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LAND MOBILE COMMUNICATIONS COUNCIL

Writer's Address and Telephone Number:

January 30, 1998

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Daniel B. Phythyon, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
Room 5002
2025 M Street, N. W.
Washington, D. C. 20554

Re: PR Docket No. 92-235
Ex Parte Presentation

Dear Mr. Phythyon:

This is with reference to an issue that has been raised by MRFAC, Inc. ("MRFAC") and Forest Industries Telecommunications ("FIT") in various filings with the Commission. Specifically, MRFAC/FIT have requested that the Commission interpret its re-farming policies as permitting a user willing to invest in new, spectrum-efficient technology to be entitled to stack channels and attain co-primary status as against co- and adjacent channel users, whether that user be high-power or low-power, as long as: (1) the application has been coordinated; and (2) the user proposes to employ equipment with efficiency equivalent to narrowband.

In other words, licensees who are able to secure coordination for these types of systems will be treated the same -- no better and no worse -- than any other applicant who is able to achieve successful coordination, whether that applicant be wideband (25 kHz) or narrowband (e.g. 6.25 kHz). Again, however, the predicate is that the licensee proposes a system which offers spectrum efficiency equivalent to that specified by the Commission (e.g. 4,800 bps per 6.25 kHz). For example, if an applicant requested and secured coordination for four (4) adjacent 6.25 kHz channels using equipment which operated with 25 kHz bandwidth and which provided four separate voice paths, that applicant would be entitled to co-primary status as against adjacent channel users coordinated subsequently: Coordinators would be expected to protect that user just as they would protect any applicant who had already received coordination from an applicant who files subsequently.

LMCC's support for this position is premised on the notion that granting the clarification requested by MRFAC/FIT will not further delay Commission action on the LMCC low power plan.

An original and one copy of this letter is supplied for inclusion in the docket.

Any questions regarding this matter may be directed to the undersigned.

Sincerely,

Larry A. Miller by WHZ

Larry A. Miller
President

cc: D'wana Terry
Herbert W. Zeiler
Ira R. Keltz

CERTIFICATE OF SERVICE

I, Joseph C. Fezie, hereby certify that a true copy of the attached "Petition for Partial Reconsideration" has been hand-delivered to the following, this 8th day of July, 1999:

Jeffrey L. Sheldon, Esquire
United Telecom Council
Suite 1140
1140 Connecticut Avenue, N. W.
Washington, D. C. 20036
Counsel for UTC

Wayne V. Black, Esquire
Keller & Heckman, L.L.P.
Suite 500 West
1001 G Street, N. W.
Washington, D. C. 20001
Counsel for American Petroleum Institute

Thomas J. Keller, Esquire
Verner Liipfert Bernhard McPherson & Hand, Chartered
Suite 700
901 Fifteenth Street, N. W.
Washington, D. C. 20005-2301
Counsel for Association of American Railroads

Michele Farquhar, Esquire
Hogan & Hartson, L.L.P.
555 Thirteenth Street, N. W.
Washington, D. C. 20004-1109
Counsel for American Automobile Association

Joseph C. Fezie